

Present: Supervisor D. Brochey; Councilmen A. Bax, M. Marra, and R. Winkley; Dep. Sup. S. Edwards; Eng. R. Lannon; Atty. M. Davis; Asst. Atty. B. Seaman; WPCC Admin. J. Ritter; Police Chief C. Salada, Bldg. Insp. T. Masters; Finance Director P. Kloosterman; Internal Claims Auditor, M. Johnson; 3 Press, 5 Residents and Dep. Clerk C. Schroeder

Also Present: Rec. of Taxes J. Stephens; Highway Supt. D. Janese; Dep. Supt. K. Payne; Storm Water Manager G. Caverly

The Supervisor opened the Worksession at 6:30 PM, followed by the Pledge of Allegiance and a moment of silent reflection in remembrance of Donna Johnson, mother of Mike Johnson. He also asked everyone to keep in their prayers Ben Sauer, a four-year old suffering from brain cancer.

Agenda:

Winkley: Add Police Union Contract, Attorney Contract, and Engineer Contract

Marra: Add NYPA Issue

Brochey: Add Quasar, Pekin Fire Dept. Request.

Also, the Clerk had a revision to the Hawking and Peddling Law. She asked that it be reviewed by the Town Board and attorney. At the next meeting a Public Hearing could be scheduled.

Bax MOVED to direct Attorney Davis to review the revised Hawking, Peddling and Soliciting Law. Seconded by Winkley and carried 4-0.

Bax MOVED the agenda, as amended. Seconded by Marra and carried 4-0.

Abstract: Winkley MOVED to approve the regular Abstract of Claims #4982 to #4983 for F/Y 2013; and 417 to 790 for F/Y 2014 and recommended payment in the amount of \$671,943.41, plus a Post Audit of \$138,403.23. Seconded by Marra and carried 4-0.

Post-Audit: Winkley MOVED to include the following vouchers for a post-audit payment: Key Bank - \$200.27 and Ally Financial \$9,531.10. Seconded by Bax and carried 4-0.

Joseph Davis State Park sign: Brochey said the sign is at the Park. The State is willing to work with the Town to put it up. State Parks crews are also willing to come and fix all the pavilions and tables this summer.

Pay Status of Highway Employee: Bax said this was discussed in executive session at the last meeting. Bax said there is a discrepancy in Mrs. Travis's currently rate and what she was promised when she was rehired. Bax requested to table the matter one more time to make sure they come up with the right decision.

Winkley MOVED to table. Seconded by Bax and carried 4-0.

Also, in regards to Highway, Supervisor Brochey said there was only \$300,000 available for roads in 2014. Janese said it wasn't his intention to pave all 21 roads in need of repair. He would go ahead and repair the ones he felt were in the worst condition.

Muckland Pumps: Eng. Lannon said his staff performed a site visit, collected a lot of data and took a lot of photos. They are currently researching options for replacement pumps. He would provide more information to the Board at the RTBM.

Municipal Review Fee: Lannon said he excerpted the review fees after §22A-6 of required improvements from the Town Code. The Municipal Review Fee Schedule was last modified in July 2012. At that time, the Engineering Review Fee for a public improvement was based on a percentage of construction costs of the improvement.

Lannon is proposing that that fee schedule be deleted in its entirety and replaced with a flat fee of \$1,000, regardless of the size of the project.

Also, the Public Improvement Inspection Deposit Fee Schedule, as modified in July 2012, would be deleted in its entirety and reflect what is currently in the Town Code, § 22A-6, which identifies an outline of procedures that were adopted in 2005.

Marra directed the Town Attorney to review the revisions with Eng. Lannon.

Warrant Server: Asst. Attorney Seaman said he did some research as to who is qualified to serve conviction warrants in the Town. The law, he said, is very clear – A Sheriff or a duly appointed Town Constable. The Town cannot employ just anyone to serve a conviction warrant. Bax said he would reach out to all parties to determine what the Judges are specifically requesting.

CWM Legal Agreement: Atty. Davis said he reviewed the Agreement with Councilman Bax. Bax said he had a few additions he would like to incorporate. In particular, he would like the agreement to include access to Attorney Abraham's work product and to communicate with his office. Bax said he spoke to Claude Joerg, the County Attorney. He seemed to be okay with that.

Bax MOVED to authorize the Supervisor to sign the Agreement subject to Attorney Davis's conversation with the County Attorney as to any changes that would be incorporated. (There was no second.)

Winkley recommended they wait until the document is finalized before it is signed. It was brought up that there may be a different fee involved than the original amount stipulated. I have no problem as far as the Attorney saying it is okay. I want to have all the answers.

Bax said the amount at issue has historically been \$50,000 per municipality. There was some talk at the Legislature that they wanted to reduce that potentially to \$25,000. That ship has sailed in the sense that the agreement they provided to us was \$50,000/\$50,000 and memorialized the historic agreement between the Town and the County. We already forwarded our \$50,000 installment. It would be the County's turn for the \$50,000. Essentially what this agreement says is that we will continue along those lines moving forward. There is talk, although it is not in the agreement, to reach out to other municipalities for contribution to make this less one-sided as far as being the Town of Lewiston's fight or its financial responsibility. Right now, we want to make sure we stand shoulder to shoulder with the County to let them understand we are against the expansion of the CWM site.

Davis said one of the issues he discussed specifically with Mr. Bax was the \$50,000. The contract talks about the County paying the first \$50,000 and then the Town paying the next \$50,000. Then you get to the next paragraph it says we're going to use the town's \$50,000 and then the County would pay \$50,000. When that money's gone, the Town would pay another \$50,000. That's \$100,000, not \$50,000. That was an issue I raised to Mr. Bax. That language should be tightened up. Also, the agreement talks about many other municipalities weighing in and passing resolutions about the health concerns that this facility proposes. Mr. Bax mentioned to me that there was some hope of reaching out to other municipalities in Niagara County which I think is only fair. That is not mentioned in the agreement and I don't know that it will be but to the extent that conversation can be furthered would be a positive development.

Bax said it is the Legislators' intent and his to try and solicit as much support for that effort as possible. This agreement wasn't intended to delineate all the aspects of the relationship with the Town. It just basically formalizes our agreement of standing shoulder to shoulder against the expansion.

Marra said the Town is committed to this. The Town made a payment of \$50,000 for 2013 in November and has set aside \$50,000 for 2014. His concern is the stipulation

that the agreement automatically renew. Bax said the agreement could be terminated at any time by the County or Town of Lewiston.

Davis said they should hold off on signing the agreement until he talks to the County Attorney about the order of payments and actual revisions are made to the agreement.

Bax went on record stating that it is his position to have this contract executed tonight, subject to the Town Attorney's approval. If the Board chooses to wait and see what that discussion with Atty. Davis and Atty. Joerg is, that is fine with me. I think the County should be given a clear message tonight that it is our intention to sign along very similar, if not exact, terms once we clear those slight issues with the contract.

Winkley MOVED to table until the RTBM, Seconded by Marra and carried 4-0.

Removal of Planning Board member: Davis said there is a State statute that talks about training of planning board members and removal of planning board members. If the training is not completed, that member is not eligible for re-appointment but removal of that member is not as clear-cut. It provides for removal but it has to be pursuant to a local law. You can remove a planning board member for not having the training or not having adequate attendance but it has to be pursuant to a local ordinance or law. We don't have that local law in place. We could pass a local law to provide for the removal. It would just take a couple paragraphs.

Johnson said he was under the impression there was a Town Policy in place calling for the removal after three undocumented consecutive absences. Davis said he would look into that.

Bax MOVED to direct the Town Attorney to look into drafting a local law after checking the Town Policy. Seconded by Winkley and carried 4-0.

Dickersonville Cemetery Sign: The Clerk requested waiver of the \$50.00 permit fee to install a sign at the cemetery entrance.

Winkley MOVED to waive the permit fee. Seconded by Bax and carried 4-0.

Transfer Clarification: The Finance Officer asked to clarify a transfer that he proposed at the last meeting. This transfer is from a B-Fund Equipment account (B-1990-0401-0200) to a TE-Fund account (TE8-0000-0200-0000) in the amount of \$4,843.16 bringing the balance in the TE-Fund account to zero. The expenses booked against the TE account were for cameras for the police department. A portion of the funds were raised through a police fund raiser. This entry will expense the remaining \$4,843.16 to equipment for year-end 2013.

Marra MOVED for approval. Seconded by Winkley and carried 4-0.

Joint Meeting: **Marra MOVED to schedule a Joint T/V Board Meeting on Monday, March 24, 2014 at 5:00 PM at Town Hall. Seconded by Marra and carried 5-0.**

Uniform Notice of Claim Designation: The Clerk noted that the current designee to which the Secretary of State shall transmit a copy of any Notice of Claim served upon the Secretary of State is Carol J. Brandon, now retired. The Board is requested to change the designee to the Acting Town Clerk, Donna R. Garfinkel.

Bax MOVED for approval. Seconded by Marra and carried 4-0.

WPCC – Conference: On March 24, 2014, the Buffalo Environmental Conference will be held at the Adams Mark Hotel in Buffalo. The WPCC would like to send 5 people at a cost of \$365.00. This is a yearly function that provides an Operator with needed credit hours for the Waste Water Treatment license. Funds to be taken from SS1-8130.

Bax MOVED for approval. Seconded by Marra and carried 4-0.

Pond Request: The Board received a request from Christopher Jordan to have a half acre pond dug on his property on Moore Road, SBL# 76.00-2-31.2 for the sole

purpose to excavate the soil to use as fill for the house as the property is below street level. He is also asking to have the permit fee waived as none of the soil will be removed from the property. The pond will also act as drainage for excess water.

Marra said that as long as the land disturbance is less than an acre he would be excused from the Excavation Law and the fee would be waived. Mr. Jordan would have to abide by DEC and land disturbance requirements. He would have to come in for a permit. The Building Inspector would advise him then of necessary requirements to be sure there are no issues.

Marra MOVED to approve Mr. Jordan's pond request and waive the permit fee. Seconded by Winkley and carried 4-0.

Legacy Drive: The Planning Board on 2/20/14, reviewed a request from Dominic Massaro, for a waiver from Town Code 22A-6 required improvements (F) to eliminate sidewalks on Legacy Drive. The Board also reviewed a request to amend the approved site plan to eliminate the street lights from Legacy Drive.

The Planning Board recommends the request for a sidewalk waiver be denied. The Planning Board recommends that the applicant be allowed to reduce the number of streetlights from 16 to a minimum of 8 and a maximum of 10, to be determined in consultation with the Building Inspector and Town Engineer. The developer is required to locate the streetlights on private property -- outside of the Town of Lewiston's right-of-way.

Bax MOVED to approve the recommendation of the Planning Board. Seconded by Marra and carried 4-0.

Atty. Seaman said LMK Realty Associates, LLC is requesting the Town's consideration of substituting a performance bond in the amount of \$44,000 for the benefit of the Town of Lewiston, in lieu of presently escrowed funds in the same amount to guarantee the performance of LMK Realty, as it pertains to the construction of sidewalks shown on the approved site plans for the North Ridge Drive Development, also known as Legacy at Lewiston. Atty. Seaman said this was acceptable subject to certain conditions agreed upon between the Attorneys representing LMK Development and the Town. As well as Town Engineer being consulted and review the installation of the sidewalks and that LMK pay that fee for him to do that.

If this is something the Board agrees to, Seaman recommended a resolution authorizing the Supervisor to sign the agreement. If the Board wishes to discuss this further put it for executive session.

Brochey MOVED to discuss this further with the Town Attorney in Executive Session. Seconded by Bax and carried 4-0.

Town Clerk Conference: The Town Clerk is requesting permission to attend the NYS Town Clerk's Association Conference April 27-30 in Saratoga Springs, NY. Funds has been budgeted for this expenditure.

Marra MOVED for approval. Seconded by Bax and carried 4-0.

University Drive: Eng. Lannon said he submitted a proposal dated 3/6/14 for survey services for ownership of University Drive. Lannon said there had been some question as to the ownership of that roadway. The survey would be the first step in the process of determining ownership. The proposal is from Niagara Boundary in the amount of \$1,680 to prepare a map and do the research.

Winkley MOVED to accept the proposal. Seconded by Marra and carried 4-0.

The Finance Director and Internal Claims Auditor to determine the source of funding for this expense. Lannon asked that this not be allocated to the Engineer Budget. It is not an engineering expense, he said.

The Building Inspector said the issue is that sometime in the past, it looked like the road was transferred to the Town of Lewiston from the point in front of Dryer Arena to Lewiston Road but nothing was ever filed with the County. It is non-existent on the Tax Map.

DVG Construction: Masters said there was a project that was approved by the Planning Board and Town Board previously – Bridgewater Ests. It is going to be a 2-year project for 139 apartments. The contractor is asking for a 2-year permit as opposed to a 1-year to save a considerable amount in permit fees. Masters said this has been done in the past.

Winkley MOVED for approval. Seconded by Marra and carried 5-0.

Quasar: At this time, the Supervisor provided an update on Quasar, as he has been fielding a lot of calls and emails from concerned residents. Brochey said he called Nathan Carr at Quasar informing him not to dump or sell any of their product within the Town until further review. He and the Building Inspector have been looking the matter over and think it's illegal.

Town resident, Ronald Craft, said he had done some research and compiled a report for Tim Masters that he has had since December outlining all the Town Laws, EPA and DEC Laws. It states on the DEC website that "the Department promotes beneficial use of bio-solids that meet quality standards. However, the Department does not dictate a preferred method. The decision to select use disposal option lies with local municipalities." Equate is considered solid waste. We do have laws that state if it is rejected, as being spent, useless, worthless or in excess to the owners of which this product is -- it is a spent product from Quasar from making electricity. It is a waste product. They cannot inject anything into our land anywhere in the Town or dump this type of product.

The Supervisor said he has already instructed the Building Inspector to email the report to Quasar.

Craft said other municipalities through-out the State are also fighting the same thing. They have put forth moratoriums on any spreading within their Town boundaries. This product has been approved by the DEC. Quasar does not have to come to the Town. It is up to the Town to contact Quasar to say it is illegal. You have to go after them and say this isn't happening. If you don't do that, they will. They want some 2,500 acres in the Town to use for this stuff. The Supervisor said the Building Inspector is on top of it and would take care of it the next day.

Police Union Contract: Winkley said they discussed the Police Contract at the last executive session but did not take action on it.

Winkley MOVED to approve a Police Contract adjustment and part-time salary for police officer per the contract. Seconded by Marra and carried 4-0.

NYPA: Marra said he and Councilman Winkley are sponsoring a Resolution that calls upon the New York Power Authority to make an annual payment to the Town of Lewiston for police and fire protection and to appoint Town Councilmen Michael Marra and Ronald Winkley to initiate negotiations with NYPA related to payments to the Town for the expense of police and fire protection in Lewiston.

Marra said they met with Gil Quiniones, the President and CEO of the Power Authority some time ago. He indicated that he might be willing to assist Lewiston with the police and fire budgets. A similar resolution was passed in 2013, in general terms, asking the Power Authority to consider helping the Town of Lewiston.

Michael Johnson said he did some research on this. If the Power Authority were to pay special district taxes they would be paying \$4.9 million / year, just for special district taxes that all residents pay for. If you negotiate the police budget and fire budget together that would be a safety tax that would help you tremendously.

Bax agreed. We are talking about a payment-in-lieu of taxes. The Power Authority and Reservation take up a considerable amount of taxable land in the Town of Lewiston. Without a Town tax, we, as a Town Board are crippled in our ability to continue to maintain the increase cost of providing these services. We are trying to maintain a no tax for our Town. The best way is for a cooperative relationship between the Town of Lewiston and the New York Power Authority.

Bax MOVED to adopt the Resolution calling on the New York Power Authority to contribute funding to the Host Community of Lewiston for police and fire protection and to appoint Town Councilmen Michael Marra and Ronald Winkley to represent the Lewiston Town Board with NYPA related to the Town for the expense of police and fire protection in Lewiston. Seconded by Marra and carried 4-0.

Pekin Fire Company: The Supervisor said he had been made aware of an issue with the Pekin Fire Company. They have put up fund raising signs in the Town of Lewiston but the signs have been removed. Although the fire company is not within the boundaries of the Town, it does have a contract for service with the Town. They are requesting a blanket certificate to place these fund raising signs in the Town of Lewiston.

Winkley MOVED to allow the Pekin Fire Co. to place fund raising signs in the Town of Lewiston, providing that they follow the Town Code, as specified. Seconded by Bax and carried 4-0.

Winkley MOVED to approve the contract with the Town Attorney, as reviewed by the Town Board and authorized the Supervisor to sign the contract. Seconded by Marra and carried 4-0.

Winkley MOVED to approve the contract with the Town Engineer, as reviewed by the Town Attorney and authorized the Supervisor to sign the contract. Seconded by Bax and carried 4-0.

Bax MOVED to enter into executive session to hear advice of Counsel on the Legacy Drive issue. Seconded by Marra and carried 4-0. 7:50 PM

Executive Session:

Present: Brochey, Bax, Marra, Winkley, Davis, Seaman

Issues discussed:

1. LMK Realty Associates, LLC

Bax MOVED to exist the Executive Session and re-covene the worksession. Seconded by Marra and carried 4-0. Time: 9:46 PM

Action Taken:

Marra MOVED to authorize the Supervisor to sign the agreement with LMK Development, LLC to release \$44,000 held in escrow by LMK's Attorney pursuant to conditions in written agreement with the addition that the Town Engineer approve installation of sidewalks and LMK Realty pay engineer fees related to that, Seconded by Bax and carried 4-0.

Marra MOVED to adjourn, Seconded by Bax and carried 4-0.

Executive Session minutes taken by:

Councilman Winkley

Transcribed and
Respectfully submitted by:

Carole N. Schroeder
Deputy Town Clerk